

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 470 of 2017**

1. Shankar Lal aged about 34 years son of Kamisan Lal Yadav.
2. Harish Chand aged about 36 years son of Kamisan Lal Yadav.
3. Radha Bai aged about 35 years wife of late Ramchand.
4. Saurabh alias Sanni aged about 15 years son of late Ramchand.
5. Seema alias Saini aged about 13 years daughter of late Ramchand.

Petitioners No.4 and 5 are minor through their natural guardian mother Radha Bai wife of late Ramchand Yadav.
All are residents of village Pathariya, Tahsil Pathariya, District Mungeli (Chhattisgarh)

---Petitioners
Plaintiffs

Versus

1. Prakash aged about 45 years son of Shri Anand Dutt Gupta, resident of Village and Tahsil Pathariya, District Mungeli (Chhattisgarh).
2. State of Chhattisgarh through the Collector, Mungeli (Chhattisgarh)

---Respondents
Defendants

For petitioners	:	Mr. Somnath Verma, Advocate.
For respondent/State	:	Mr. Dheeraj Kumar Wankhede, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**12/07/2017**

1. The petitioner/plaintiffs have challenged the impugned order passed by the trial court granting an application under Order 9 Rule

7 of the Code of Civil Procedure, 1908.

2. Mr. Somnath Verma, learned counsel for the petitioners/plaintiffs would submit that upon grant of application under Order 9 Rule 7 of CPC, defendant can only participate in the further proceeding of suit and he is not entitled to file written statement and he cannot go back on what has been done.

3. I have heard the learned counsel for the petitioners.

4. Order 9 Rule 7 CPC provides as under:-

“Order 9 – Appearance of parties and consequence of non-appearance

Rule 7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.- Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

A focused glance of Order 9 Rule 7 CPC. It appears that Order 9 Rule 7 CPC is simply an enabling provision in case where the defendant wants to set-aside the order placing him *ex parte* and to be relegated to a stage at which the suit was when he absented himself, then has to assign good cause for his previous non-appearance, but if he merely wants to take part in proceedings at the stage, where he appears, it is not necessary to get the previous order placing him *ex parte* set aside.

5. In **Arjun Singh v. Mohindra Kumar**¹ the Supreme has held that Rule 7 doesn't mean that defendant cannot be allowed to appear at all, if he doesn't show good cause for his non-appearance on the date of hearing. All that rules means is that he cannot be relegated to position he would have accepted if he had appeared.

6. In view of above discussion, I do not find any force in the submission of learned counsel. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

SD/-

Sanjay K. Agrawal
Judge

1 AIR 1964 SC 993